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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,121	03/10/2004	Christopher T. Evans	UNION STREET	2491

7590 09/19/2006
James C. Wray
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EXAMINER

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/796,121	Applicant(s) EVANS ET AL.	
	Examiner Luan K. Bui	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 and 26-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22,23,47 and 48 is/are rejected.
- 7) ☒ Claim(s) 24,25 and 49-51 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/28/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 1-21 and 26-46 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/5/2006.

The traversal is on the ground(s) as indicated in the response are noted. They are not persuasive because the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function or effect and because the inventions are independents or distinct from each other so examination of each invention will necessitate disparate searches which would clearly pose a burden. Since the species are not useable together they are by definition independent/distinct inventions. Once the claims are determined to be directed to mutually patentable inventions and the office requires an election of species, the appropriate traverse is an admission on the record that applicant does not find the claimed species are patentable, one over the other. Having not done so the reasons presented are not relevant. Applicant is not entitled to examination of multiple independent inventions in one application.

The requirement is still deemed proper and is therefore made **FINAL**.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 23, the phrase "the openers" lacks proper antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 22, 23, 47 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Rebne et al. (5,019,125; hereinafter Rebne'125). Rebne'125 discloses a blister package opener apparatus (10) comprising a blister package (34) having blisters (37-42) and a cover layer (54, 55), a frame (12) connected to a top of the blister package and an opener (11, 23-26) connected to the frame along the posts (48-51) and the side walls (14-21). As to claim 23, the frame covers the cover layer (Figure 3) and the opener comprises tabs (23-26) having ends hinged to the frame (since tabs hingedly connected to the opener and the opener connected to the frame. Therefore, the tabs hinged to the frame, Figures 3 and 6). The tabs are inherently capable of lifting. Claims 47 and 48 are anticipated by the method of using the apparatus of Rebne'125.

6. Claims 22 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Intini (4,537,312). Intini discloses a blister package opener apparatus (10) comprising a blister package (16) having blisters (22) and a cover layer (20), a frame (14) connected to a top of the

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blister package and an opener (12) connected to the frame along the sides (32, 38, Figures 5-7).

Claim 47 is anticipated by the method of using the apparatus of Intini.

7. Claims 22, 23, 47 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Ardito (4,074,806). Ardito discloses a blister package opener apparatus (10) comprising a blister package (44) having blisters (46) and a cover layer (48), a frame (12) connected to a top of the blister package and an opener (14) connected to the frame along the hinge (16). As to claim 23, the frame covers the cover layer (Figure 3) and the opener comprises tabs (34) having ends hinged to the frame (since tabs hingedly connected to the opener and the opener connected to the frame. Therefore, the tabs hinged to the frame, Figure 1). The tabs are inherently capable of lifting. Claims 47 and 48 are anticipated by the method of using the apparatus of Ardito.

Allowable Subject Matter

8. Claims 24, 25 and 49-51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the**

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organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb
September 17, 2006



Luan K. Bui
Primary Examiner
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